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UNFAIR COMPETITION

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ROBERT C. KLINGER
PATENT AGENT

October 7, 1992

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Our File No. 910759.ORI

Re App : Robert A. Ersek et al

Serial No.: 07/863,848

Art Unit: 3308

Filed : April 6, 1992

Examiner D. Isabella

For : TREATMENT OF UROLOGICAL
AND GASTRIC FLUID REFLUX
DISORDERS BY INJECTION
OF MICRO PARTICLES

338
9-29-92
041

LETTER

Honorable Commissioner of Patents and Trademarks
Attention: Examiner David J. Isabella
Art Unit 3308
Washington, D.C. 20231

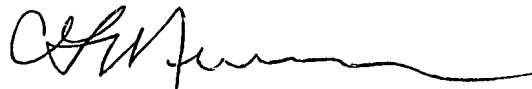
Sir:

On October 2, 1992, our office received an Official Action dated September 28, 1992 in regard to the above-referenced patent application.

The Official Action included a page 2 of an Official Action in another case, Serial No. 07/898,326, which was apparently inadvertently included with our Action. Enclosed and returned to you is the single page.

Yours very truly,

HAUGEN AND NIKOLAI, P.A.


C. G. Mersereau

CGM/cmz

Enclosure

Serial No. 898326

Art Unit 3308



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This application contains claims directed to the following patentably distinct species of the claimed invention: Figures 5-9;10;11;12;13-18;19;21-29;30.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.


Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

A telephone call was made to Mr. Frishauf on August 25, 1992 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the response to this requirement to be complete must include an election of the species to be examined even though the requirement be traversed.

Any inquiry concerning this communication should be directed to David J. Isabella at telephone number (703) 308-0858.


DAVID J. ISABELLA
PRIMARY EXAMINER
ART UNIT 3308

DJI
September 25, 1992